



FEDERAL ACQUISITION CIRCULAR

October 25, 1994

Number 90-21

Federal Acquisition Circular (FAC) 90-21 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-21 is effective October 25, 1994.

FAC 90-21 SUMMARY

Federal Acquisition Circular (FAC) 90-21 amends the Federal Acquisition Regulation (FAR) as specified below:

Multiple Award Schedule Ordering Procedures

Subpart 8.4, Part 38, and various sections of the FAR are being revised as a result of GSA's efforts to streamline and revise the Multiple Award Schedule Program's ordering procedures.

Replacement pages: *Structure of the FAR to the Subpart Level (pp. 1&2), 6-1, and 6-2, TOC, Part 8, 8-1 and 8-2, 8-7 thru 8-16, 13-1 and 13-2, 13-5 and 13-6, TOC, Part 38, and 38-1.*

FAC 90-21 FILING INSTRUCTIONS

Remove Pages

Structure of the FAR
to the Subpart Level
(pp. 1&2)

6-1 and 6-2

TOC, Part 8
8-1 and 8-2
8-7 thru 8-19

13-1 and 13-2
13-5 and 13-6

TOC, Part 38
38-1 thru 38-3

Insert Pages

Structure of the FAR
to the Subpart Level
(pp. 1&2)

6-1 and 6-2

TOC, Part 8
8-1 and 8-2
8-7 thru 8-16

13-1 and 13-2
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COMPETITION REQUIREMENTS

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results of competition (e.g., adequate price competition), which are addressed in other parts (e.g., Part 15).

6.001 Applicability.

This part applies to all acquisitions except—

- (a) Contracts awarded using the small purchase procedures of Part 13;
- (b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;
- (c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of an existing contract;
- (d) Orders placed under requirements contracts or definite-quantity contracts; or
- (e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—
 - (1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or
 - (2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 Definitions.

“Full and open competition,” when used with respect to a contract action, means that all responsible sources are permitted to compete.

“Procuring activity,” as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” shall be synonymous with “contracting activity” as defined in Subpart 2.1.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new novel or changed concepts, approaches, or methods; was not submitted previously by another; and, is not otherwise available within the Federal Government. In this context, the term does not mean that the source has the sole capability of performing the research.

SUBPART 6.1—FULL AND OPEN COMPETITION

6.100 Scope of subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

(a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure or combination of competitive procedures contained in this subpart that is best suited to the circumstances of the contract action. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government.

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

- (a) *Sealed bids.* (See 6.401(a).)
- (b) *Competitive proposals.* (See 6.401(b).) If sealed
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bids are not appropriate under (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under (c) or (d) of this section.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).

(d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541, et seq.) is a competitive procedure (see Subpart 36.6 for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—

- (i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and
- (ii) A peer or scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure.

SUBPART 6.2—FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

6.200 Scope of subpart.

This subpart prescribes policy and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract action under the circumstances described in 6.202 or 6.203 below.

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier)

available for furnishing the supplies or services in case of a national emergency or industrial mobilization; or

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in subparagraph (a)(1) of this section is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

6.203 Set-asides for small business and labor surplus area concerns.

(a) To fulfill the statutory requirements relating to small business concerns and labor surplus area concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business or labor surplus area concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to small business set-asides.

(d) Subpart 20.2 prescribes policies and procedures that shall be followed with respect to labor surplus area set-asides.

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

SUBPART 6.3—OTHER THAN FULL AND OPEN COMPETITION

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.

8.001 Priorities for use of Government supply sources.

(a) Except as required by 8.002, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority—

(1) *Supplies.*

- (i) Agency inventories;
- (ii) Excess from other agencies (see Subpart 8.1);
- (iii) Federal Prison Industries, Inc. (see Subpart 8.6);

(iv) Procurement lists of supplies available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points;

(vi) Mandatory Federal Supply Schedules (see Subpart 8.4);

(vii) Optional use Federal Supply Schedules (see Subpart 8.4); and

(viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.* (i) Procurement lists of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

(ii) Mandatory Federal Supply Schedules (see Subpart 8.4) and mandatory GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1);

(iii) Optional use Federal Supply Schedules (see Subpart 8.4) and optional use GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1); and

(iv) Federal Prison Industries, Inc. (see Subpart

8.6), or commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in 41 CFR 101-26.301 and in an unusual and compelling urgency as prescribed in 6.302-2 and in 41 CFR 101-25.101-5.

8.002 Use of other Government supply sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

- (a) Jewel bearings and related items (see Subpart 8.2);
- (b) Public utility services (see Subpart 8.3);
- (c) Printing and related supplies (see Subpart 8.8);
- (d) Automatic data processing and telecommunications acquisitions (see Part 39);
- (e) Leased motor vehicles (see Subpart 8.11);
- (f) Strategic and critical materials (e.g., metals and ores) from inventories exceeding National Defense Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Building #4, Suite 100, Arlington, VA 22202); and
- (g) Helium (see 30 CFR Parts 601 and 602).

SUBPART 8.1—EXCESS PERSONAL PROPERTY

8.101 Definition.

“Excess personal property” means any personal property (see 45.601) under the control of a Federal agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

8.102 Policy.

When it is practicable to do so, agencies shall use excess personal property as the first source of supply in fulfilling their requirements and those of their cost-reimbursement contractors. Accordingly, agencies shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating contracting action.

8.103 Information on available excess personal property.

Information regarding the availability of excess personal property can be obtained through—

(a) Review of excess personal property catalogs and bulletins issued by the General Services Administration (GSA);

(b) Personal contact with GSA or the activity holding the property;

(c) Submission of supply requirements to the regional offices of GSA (GSA Form 1539, Request for Excess Personal Property, is available for this purpose); and

(d) Examination and inspection of reports and samples of excess personal property in GSA regional offices.

8.104 Obtaining nonreportable property.

GSA will assist agencies in meeting their requirements for supplies of the types excepted from reporting as excess by the Federal Property Management Regulations (41 CFR 101-43.312). Federal agencies requiring such supplies should contact the appropriate GSA regional office.

SUBPART 8.2—JEWEL BEARINGS AND RELATED ITEMS

8.201 Definitions.

“Jewel bearing” means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

“Plant,” as used in this subpart, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota.

“Related item,” as used in this subpart, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (a) is made from material produced by the Verneuil flame fusion process, (b) has a geometric shape up to a maximum of 1 inch in any dimension, (c) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (d) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

8.202 Policy.

Except as otherwise provided in this subpart, (a) jewel bearings shall be acquired from the Plant and (b) related items shall be acquired either from domestic manufacturers or from the Plant.

8.203 Procedures.

8-2 (FAC 90-21)

8.203-1 Contract clause and solicitation provision.

(a) The contracting officer shall insert the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in paragraph (b) of this subsection, except for—

(1) Small purchases under Part 13;

(2) Items purchased and used outside the United States, its possessions, and Puerto Rico; or

(3) Items that the contracting officer knows do not contain jewel bearings or related items (the contractor's certification required by 8.203-2 does not in itself satisfy this requirement).

(b) Federal supply classes and groups:

(1)	Federal Supply Classes
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6605	Navigational Instruments
6610	Flight Instruments
6615	Autopilot Mechanisms and Airborne Gyro Components
6620	Engine Instruments
6625	Electrical- and Electronic-Properties Measuring and Testing Instruments
6630	Chemical-Analysis Instruments
6635	Physical-Properties Testing Equipment
6636	Environmental Chambers and Related Equipment
6640	Laboratory Equipment and Supplies
6645	Time-Measuring Instruments
6650	Optical Instruments
6655	Geophysical and Astronomical Instruments
6660	Meteorological Instruments and Apparatus
6665	Hazard-Detecting Instruments and Apparatus
6670	Scales and Balances
6675	Drafting, Surveying, and Mapping Instruments
6680	Liquid- and Gas-Flow, Liquid-Level, and Mechanical-Motion Measuring Instruments
6685	Pressure-, Temperature-, and Humidity-Measuring and Controlling Instruments
6695	Combination and Miscellaneous Instruments

(2)	Federal Supply Groups
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12	Fire-Control Equipment
14	Guided Missiles
15	Aircraft, Airframe Structural Components
16	Aircraft Components and Accessories
18	Space Vehicles
23	Motor Vehicles and Motorcycles
25	Vehicular Equipment Components

(1) The proposed supplier is either the sole source of the required service or has been selected after consideration of more than one source of supply.

(2) The service to be provided is adequate in terms of quantity, quality, and delivery schedule to meet the acquiring agency's needs.

(3) The selected rate schedule is the most advantageous of the rate schedules available to the agency in terms of economy, efficiency, or service and is based upon the class, conditions, and characteristics of services being rendered to the agency.

(4) The proposed facilities charge, if any, is (i) necessary to secure the required service, (ii) based on current cost or pricing data, and (iii) reasonable in total amount, and may be certified for payment by the agency.

(5) The proposed acquisition meets the requirements of this subpart.

8.307-2 Precontract review by GSA.

(a) Each agency shall refer applicable proposed acquisitions of utility services to GSA for review unless an agency has its own program of prior review under 8.307-3.

(b) GSA shall acknowledge the date of receipt of the referral from the agency.

(c) If GSA does not provide comments to the referring agency within 20 workdays after a proposed utility services acquisition is received for review (or within a lesser period if agreed upon), the referring agency may complete negotiations and execute the contract.

(d) Proposed acquisitions forwarded for GSA prior review shall contain the technical and acquisition data required by 8.307-1(c) and 8.307-4.

8.307-3 Precontract review by acquiring agency.

(a) Agencies having authorization from GSA by direct delegation of authority may conduct their own programs of utility acquisition reviews in accordance with this subpart.

(b) Agencies that do not have the authorization indicated in paragraph (a) of this section, but that have the qualified technical personnel to conduct an agency review program, may seek a direct delegation of authority to conduct such a program from the Office of Public Utilities, at the address stated in 8.303(a).

(c) Agency authority to conduct prior reviews shall not preclude the referral of any specific case to GSA for assistance, if desired by the agency.

(d) Any agency having responsibility for review shall provide by agency procedure for uniform application of the guidelines in 8.307-4.

8.307-4 Guidelines and data for precontract review.

(a) The office proposing to acquire utility services shall assemble and furnish complete information relating to each proposed acquisition sufficiently in advance to per-

mit a complete review by either GSA or the acquiring agency.

(b) The information furnished for review shall include—

(1) A technical description or specifications of the type, quantity, and quality of service required; and

(2) A copy of any service proposal or proposed contract.

(c) If not included in the foregoing, a copy of the following additional documents and data shall be furnished, if applicable:

(1) A complete copy or copies of the published or unpublished current rate schedules and tariffs of the utility supplier.

(2) The following data concerning quantity, quality, and delivery schedule of required services when new or initial services are to commence:

(i) The date initial service is required.

(ii) Data, for the first calendar year of full service, on estimated maximum demand, monthly consumption, and estimated annual cost of the service and connection charges to be paid by the agency.

(iii) Known or estimated time schedule for growth to ultimate requirements.

(iv) Estimated ultimate maximum demand and ultimate monthly consumption.

(v) A simple schematic diagram or line drawing showing the meter locations and the location of the new utility facilities to be constructed by the Government and the new connecting facilities to be constructed by the utility supplier to provide the new services.

(vi) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency to receive such utility services.

(3) Identification of all available sources or methods of supply, the cost effectiveness of each, and a statement of the ability of each source to provide the required services, including the location and a description of each available supplier's facilities at the nearest point of service.

(4) Identification of any unusual factors affecting the acquisition.

(5) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the Government, together with a description of the supplier's proposed facilities and estimated construction costs entering into the determination of the proposed connection charge, termination liability, or facilities charge.

(ii) The basis for the connection charge including the tariff provisions or written policy of the utility supplier.

(iii) A statement by the supplier that any proposed facilities charge is not in excess of the charge that other customers would be required to pay for like facilities under similar class and condition of service.

(iv) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities, in lieu of paying the connection charge proposed by the utility supplier. In the case of proposed water and sewage contracts, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility services, the agency shall furnish the data required above under 8.307-4(a), (b), (c)(1) and the following additional information:

(1) A copy of the monthly bills covering the most recent 12 months.

(2) A tabulation, by months, for the most recent 12 months, showing the utility demands, consumption and charges, fuel adjustment charges and the average monthly cost per unit of consumption.

(3) A tabulation by months, for the next 12 months showing the same data as requested in subparagraph (d)(2) of this subsection.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A simple schematic diagram or line drawing suitable to be included in the utility services contract showing the meter locations.

(6) For electric service contracts, state if the transformer at the point of delivery is owned by the Government or the utility supplier and if the metering is made on the primary or secondary side of such transformer.

8.308 Capital credits.

Capital credits are a form of cash reimbursement or offset of billings by Reconstruction Electrification Administration-financed Cooperatives to their customers. See 41 CFR 101-33.3 for procedures on processing these capital credits.

8.309 Contract clauses.

(a) The contracting officer shall insert the clause at 52.208-3, Conflicts, in solicitations and contracts for utility services.

(b) The contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. The schedule contracting office issues publications, titled Federal Supply Schedules, containing the information necessary for placing delivery orders with the contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies or services.

(b) Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7CAFL), P.O. Box 6477, Fort Worth, Texas 76115. Copies of GSA Form 457 and the GSA publication titled "Federal Supply Schedule Program Guide" may also be obtained from the above address. The "Federal Supply Schedule Program Guide," includes a listing of Federal Supply Schedules and information on the use of schedules.

8.402 Applicability.

This subpart does not apply to agencies placing orders for automatic data processing and telecommunications items or services from schedules. See Part 39 for policies and procedures for placing orders for those items or services.

8.403 [Reserved]

8.404 Using schedules.

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this Subpart 8.4, the policies and procedures of FAR Part 13 do not apply. When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsise the requirement, or make a separate determination of fair and reasonable pricing.

(b) *Optional use.* (1) Ordering activities can place orders of \$2,500 or less with any Federal Supply Schedule contractor. GSA has already determined the prices of items under these contracts to be fair and reasonable.

(2) To reasonably ensure that a selection represents the best value and meets the agency's needs at the lowest overall cost, before placing an order of more than \$2,500, an ordering activity should—

(i) Consider reasonably available information about products offered under Multiple Award Schedule (MAS) contracts; this standard is met if the ordering activity does the following:

(A) Considers products and prices contained in any GSA MAS automated information system; or

(B) If automated information is not available,

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reviews at least three (3) price lists.

(ii) In selecting the best value item at the lowest overall cost (the price of the item plus administrative costs), the ordering activity may consider such factors as—

- (A) Special features of one item not provided by comparable items which are required in effective program performance;
- (B) Trade-in considerations;
- (C) Probable life of the item selected as compared with that of a comparable item;
- (D) Warranty conditions; and
- (E) Maintenance availability.

(iii) Give preference to the items of small business concerns when two or more items at the same delivered price will meet an ordering activity's needs.

(3) MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

(4) Ordering activities should document orders of \$2,500 or less by identifying the contractor the item was purchased from, the item purchased, and the amount paid. For orders over \$2,500, MAS ordering files should be documented in accordance with internal agency practices. Agencies are encouraged to keep documentation to a minimum.

(c) *Mandatory use.* (1) This paragraph (c) applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures in paragraphs (a) and (b) of this section.

(2) In the case of mandatory schedules, ordering offices shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.

(3) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—

- (i) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;
- (ii) The order is below the minimum order thresholds;
- (iii) The order is above the maximum order limitation;
- (iv) The consignee is located outside the area of geographical coverage stated in the schedule; and
- (v) A lower price for an identical item (i.e., same make and model) is available from another source.

(4) *Absence of follow-on award.* Ordering offices, after any consultation required by the schedule, are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

8.404-1 and 8.404-2 [Reserved]**8.404-3 Requests for waivers.**

(a) When an ordering office that is a mandatory user under a schedule determines that items available from the schedule will not meet its specific needs, but similar items from another source will, it shall submit a request for waiver to the Commissioner, Federal Supply Service (F), GSA, Washington, DC 20406, except as provided in paragraph (b) of this subsection. Requests shall contain the following information:

(1) A complete description of the required items, whenever possible; e.g., descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(2) A comparison of prices and the technical differences between the requested item and the schedule item, identifying as a minimum the—

(i) Inadequacies of the schedule item to perform required functions; and

(ii) Technical, economic, or other advantages of the item requested.

(3) Quantity required.

(4) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.

(b) Ordering offices shall not initiate action to acquire similar items from nonschedule sources until a request for waiver is approved, except as otherwise provided in inter-agency agreements.

8.405 Ordering office responsibilities.**8.405-1 [Reserved]****8.405-2 Order placement.**

Ordering offices may use Optional Form 347, or an agency-prescribed form, to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule:

- (a) Complete shipping and billing addresses.
- (b) Contract number and date.
- (c) Agency order number.
- (d) F.o.b. delivery point; i.e., origin or destination.
- (e) Discount terms.
- (f) Delivery time.
- (g) Special item number or national stock number.
- (h) Brief, complete description of each item (when ordering by model number, features and options such as

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color, finish, and electrical characteristics, if available, must be specified).

- (i) Quantity and any variation in quantity.
- (j) Number of units.
- (k) Unit price.
- (l) Total price of order.
- (m) Points of inspection and acceptance.
- (n) Other pertinent data; e.g., delivery instructions or receiving hours and size-of-truck limitation.
- (o) Marking requirements.
- (p) Level of preservation, packaging, and packing.

8.405-3 Inspection and acceptance.

(a) Consignees shall inspect supplies at destination except when—

(1) The schedule provides for the schedule contracting agency to perform source inspection (in this case, the schedule will indicate that mandatory source inspection is required); or

(2) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (inspection assistance may be based on the ordering volume, the complexity of items, or the past performance of the supplier).

(b) When the schedule contracting agency performs the inspection, as specified in the schedule, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(c) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(d) Unless otherwise provided in the schedule, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

8.405-4 Delinquent performance.

If the contractor fails to perform on the order, the ordering office may terminate the order for default or give the contractor further opportunity to perform by modifying the order to establish a new delivery date (obtaining consideration as necessary).

8.405-5 Termination for default.

(a)(1) An ordering office may terminate any one or more orders for default in accordance with Part 49, Termination of Contracts. The schedule contracting office shall be notified of all cases where an ordering office has declared a Federal Supply Schedule contractor in default or fraud is suspected.

(2) Should the contractor claim that the failure was excusable, the ordering office shall promptly refer the

matter to the schedule contracting office. In the absence of a decision by the schedule contracting office (or by the head of the schedule contracting agency, on appeal) excusing the failure, the ordering office may charge the contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as reasonable a price as possible considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation "Repurchase against the account of _____ [insert contractor's name] under Delivery Order _____ [insert number] under Contract _____ [insert number]".

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering office is unable to collect excess costs, it shall take the following actions:

(i) Notify the schedule contracting office within 60 days after final payment to the replacement contractor. The notice shall include the following information about the defaulted order:

- (A) Name and address of the contractor.
- (B) Schedule, contract, and order number.
- (C) National stock or special item number(s), and a brief description of the item(s).
- (D) Cost of schedule items involved.
- (E) Excess costs to be collected.
- (F) Other pertinent data.

(ii) In addition to the above, the notice shall include the following information about the replacement contract:

- (A) Name and address of the contractor.
- (B) Item repurchase cost.
- (C) Repurchase order number and date of payment.
- (D) Contract number, if any.
- (E) Other pertinent data.

(b) Only the schedule contracting officer may terminate for default any or all items covered by the schedule contract. When notified of default action by the schedule contracting officer with respect to defaulted items, ordering offices shall—

(1) Refuse to accept further performance by the contractor;

(2) Not place further orders with the contractor;

(3) Repurchase against the contractor in default from sources designated by the schedule contracting officer; or

(4) Proceed as otherwise directed by the schedule contracting officer.

(c) All actions taken regarding terminations for default shall comply with the applicable requirements in Part 49.

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8.405-6 Termination for convenience.

(a) Ordering offices may terminate individual orders for the convenience of the Government. Only the schedule contracting officer may terminate any or all items covered by the schedule contract for the convenience of the Government.

(b) Before terminating orders for convenience, the ordering office shall endeavor to enter into a "no cost" cancellation agreement with the contractor.

(c) All actions taken regarding terminations for convenience shall comply with the applicable requirements in Part 49.

8.405-7 Disputes.

The ordering office shall refer all unresolved disputes under orders to the schedule contracting office for action under the Disputes clause of the contract.

SUBPART 8.5—[RESERVED]**SUBPART 8.6—ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.****8.601 General.**

(a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia

(b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies (18 U.S.C. 4121-4128).

(c) FPI diversifies its supplies and services to prevent private industry from experiencing unfair competition from prison workshops or activities.

8.602 Policy.

(a) Agencies shall purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions (referred to in this subpart as "the Schedule") at prices not to exceed current market prices, using the procedures in this subpart.

(b) Subject to the priorities in 8.001 and 8.603, agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing (1) supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions, and (2) services that are listed in the Schedule.

(c) If a supply not listed in the Schedule is of a type normally produced by Federal penal and correctional institutions, agencies are encouraged to suggest that FPI consider the feasibility of adding the item to its Schedule.

8.603 Purchase priorities.

(a) FPI and the Workshops for the Blind and Other Severely Handicapped may produce identical supplies or

services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

- (i) Federal Prison Industries, Inc. (41 U.S.C. 48).
- (ii) Workshops.
- (iii) Commercial sources.

(2) Services:

- (i) Workshops.
- (ii) Federal Prison Industries, Inc., or commercial sources.

(b) Supplies and services manufactured or performed by FPI are in strict conformity with Federal Specifications. These supplies and services are listed in the Schedule. Copies of the Schedule are available from Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

8.604 Ordering procedures.

(a) Contracting officers shall order (1) less-than-carload lots of common-use items (Schedule A of the Schedule) from the regional warehouses of GSA, unless it is more practical and economical to purchase directly from FPI, and (2) carload lots of common-use items, and other items listed in the Schedule, from FPI.

(b) Contracting officers shall prepare orders to FPI using the procedures in the Schedule.

(c) When the contracting officer believes that the FPI price exceeds the market price, the matter may be referred to the cognizant product division identified in the Schedule or to the FPI Washington office for resolution.

8.605 Clearances.

(a) Clearance is required from FPI before supplies on the Schedule are acquired from other sources, except when the conditions in 8.606 apply. FPI clearances ordinarily are of the following types:

(1) General or blanket clearances issued when classes of articles or services are not available from FPI.

(2) Formal clearances issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the Schedule and not covered by a general clearance. Requests should be addressed to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

(b) Purchases from other sources because of a lower price are not normally authorized, and clearances will not be issued on this basis except as a result of action taken to resolve questions of price under 8.604(c).

(c) Disputes regarding price, quality, character, or suitability of supplies produced by FPI are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

8.606 Exceptions.

FPI clearances are not required when—

- (a) Public exigency requires immediate delivery or performance;
- (b) Suitable used or excess supplies are available;
- (c) Purchases are made from GSA of less-than-carload lots of common-use items stocked by GSA (see Schedule A of the Schedule);
- (d) The supplies are acquired and used outside the United States; or
- (e) Orders are for listed items totaling \$25 or less that require delivery within 10 days.

SUBPART 8.7—ACQUISITION FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c), referred to in this subpart as "the Act," and the rules of the Committee for Purchase from the Blind and Other Severely Handicapped (41 CFR Part 51).

8.701 Definitions.

"Allocation," as used in this subpart, means an action taken by a central nonprofit agency to designate the workshops that will produce definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

"Central nonprofit agency," as used in this subpart, means the National Industries for the Blind, which has been designated to represent workshops serving blind individuals; or the National Industries for the Severely Handicapped, which has been designated to represent workshops serving severely handicapped individuals other than blind.

"Committee," as used in this subpart, means the Committee for Purchase from the Blind and Other Severely Handicapped.

"Government" or "entity of the Government" means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

"Ordering office" means any activity in an entity of the Government that places orders for the purchase of supplies or services.

"Procurement List," as used in this subpart, means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.

"Workshop for the blind" or "workshop for the other severely handicapped" (referred to jointly as workshops) means a qualified nonprofit agency for the blind or for the

other severely handicapped approved by the Committee to produce a commodity for or provide a service to the Government under the Act.

8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

- (a) Determining those supplies and services to be purchased by all entities of the Government from workshops for the blind and other severely handicapped (see 9.107);
- (b) Establishing prices for the supplies and services; and
- (c) Establishing rules and regulations to implement the Act.

8.703 Procurement List.

(a) The Committee publishes a Procurement List of all the supplies and services required to be purchased from the workshops. Copies of the Procurement List may be obtained by submitting GSA Form 457 to the General Services Administration, Centralized Mailing List Service (7CAIL), P.O. Box 17077, 819 Taylor Street, Fort Worth, TX 76102-0077. Mailing code OOSC-0002 applies.

(b) The Procurement List identifies—

(1) Workshop supplies available from the General Services Administration (GSA) stocks at supply distribution facilities and the Defense Logistics Agency (DLA) system; and

(2) Supplies that are also available from Federal Prison Industries, Inc.

8.704 Purchase priorities.

(a) The Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from qualified workshops if they are available within the period required. When identical supplies or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering offices shall purchase supplies and services in the following priorities:

(1) *Supplies:*

- (i) Federal Prison Industries, Inc. (41 U.S.C. 48).
- (ii) Workshops.
- (iii) Commercial sources.

(2) *Services:*

- (i) Workshops.
- (ii) Federal Prison Industries, Inc., or commercial sources.

(b) No other provision of the FAR shall be construed as permitting an exception to the mandatory purchase of items on the Procurement List.

(c) The Procurement List identifies those supplies for which the ordering office must obtain a formal clearance (8.605) from Federal Prison Industries, Inc., before making any purchases from workshops.

8.705 Procedures.**8.705-1 General.**

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated workshops, except that supplies identified on the Procurement List as available from DLA or GSA supply distribution facilities shall be obtained through DLA or GSA procedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the workshop designated by the Committee.

(b) Supply distribution facilities in DLA and GSA shall obtain supplies on the Procurement List from the central nonprofit agency identified or its designated workshops.

8.705-2 Direct-order process.

Central nonprofit agencies may authorize ordering offices to transmit orders for specific supplies or services directly to a workshop. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the workshop. The ordering office shall reflect this lead time in its orders.

8.705-3 Allocation process.

(a) When the direct order process has not been authorized, the ordering office shall submit a letter request for allocation (requesting the designation of the workshop to produce the supplies or perform the service) to the central nonprofit agency designated in the Procurement List. Ordering offices shall request allocations in sufficient time for a reply, for orders to be placed, and for the workshop to produce the supplies or provide the service within the required delivery or performance schedule.

(b) The ordering office's request to the central nonprofit agency for allocation shall include the following information:

(1) For supplies—Item name, stock number, latest specification, quantity, unit price, date delivery is required, and destination to which delivery is to be made.

(2) For services—Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) Other requirements; e.g., packing, marking, as necessary.

(c) When an allocation is received, the ordering office shall promptly issue an order to the specified workshop or to the central nonprofit agency, as instructed by the allocation. If the issuance of an order is to be delayed for more than 15 days beyond receipt of the allocation, or canceled, the ordering office shall advise the central nonprofit agency immediately.

(d) Ordering offices may issue orders without limitation

as to dollar amount and shall record them upon issuance as obligations. Each order shall include, as a minimum, the information contained in the request for allocation. Ordering offices shall also include additional instructions necessary for performance under the order; e.g., on the handling of Government-furnished property, reports required, and notification of shipment.

8.705-4 Compliance with orders.

(a) The central nonprofit agency shall inform the ordering office of changes in lead time experienced by its workshops to minimize requests for extensions once the ordering office places an order.

(b) The ordering office shall grant a request by a central nonprofit agency or workshop for revision in the delivery or completion schedule, if feasible. If extension of the delivery or completion date is not feasible, the ordering office shall notify the appropriate central nonprofit agency and request that it reallocate the order, or grant a purchase exception authorizing acquisition from commercial sources.

(c) When a workshop fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the workshop involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the workshop, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(d) When, after complying with 8.705-4(c), the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is \$2,500 or more.

8.706 Purchase exceptions.

(a) Ordering offices may acquire supplies or services listed on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The workshops cannot provide the supplies or services within the time required, and commercial sources can provide them earlier in the quantities required; or

(2) The quantity required cannot be produced or provided economically by the workshops.

(c) The central nonprofit agency granting the exception shall specify the quantity and delivery or performance period covered by the exception.

(d) When a purchase exception is granted, the contracting officer shall—

(1) Initiate purchase action within 15 days following the date of the exception or any extension granted by the central nonprofit agency; and

(2) Provide a copy of the solicitation to the central nonprofit agency when it is issued.

(e) The Committee may also grant a purchase exception, under any circumstances it considers appropriate.

8.707 Prices.

(a) The prices on the Procurement List are fair market prices established by the Committee. All prices for supplies ordered under this subpart are f.o.b. origin.

(b) Prices for supplies are normally adjusted semiannually. Prices for services are normally adjusted annually.

(c) The Committee may request the agency responsible for acquiring the supplies or service to assist it in establishing or revising the fair market price. The Committee has the authority to establish prices without prior coordination with the responsible contracting office.

(d) Price changes shall normally apply to all orders received by the workshop on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the workshop prior to the effective date of the change.

(e) If an ordering office desires packing, packaging, or marking of supplies other than the standard pack as provided on the Procurement List, any difference in costs shall be included as a separate item on the workshop's invoice. The ordering office shall reimburse the workshop for these costs.

(f) Ordering offices may make recommendations to the Committee at any time for price revisions for supplies and services on the Procurement List.

8.708 Shipping.

(a) Delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. The time of delivery is the date shipment is released to and accepted by the initial carrier.

(b) Shipment is normally under Government bills of lading. However, for small orders, ordering offices may specify other shipment methods.

(c) When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished promptly. Failure of an ordering office to furnish bills of lading or to designate a method of transportation may result in an excusable delay in delivery.

(d) Workshops shall include transportation costs for small shipments paid by workshops as an item on the invoice. The ordering office shall reimburse the workshop for these costs.

8.709 Payments.

The ordering office shall normally make payments for supplies or services on the Procurement List within 20 days, but no later than 30 days after shipment or after receipt of a correct invoice or voucher.

8.710 Quality of merchandise.

Supplies and services provided by workshops shall comply with the applicable Government specifications and standards cited in the order. When no specifications or standards exist—

(a) Supplies shall be of the highest quality and equal to similar items available on the commercial market; and

(b) Services shall conform to good commercial practices.

8.711 Quality complaints.

(a) When the quality of supplies or services received is unsatisfactory, the using activity shall take the following actions:

(1) For supplies received from DLA supply centers or GSA supply distribution facilities, notify the supplying agency.

(2) For supplies or services received from workshops for the blind or other severely handicapped, address complaints to the workshop involved, with a copy to the appropriate central nonprofit agency.

(b) When quality problems cannot be resolved by the workshop and the ordering office, the ordering office shall first contact the central nonprofit agency and then, if necessary, the Committee for resolution.

8.712 Specification changes.

(a) The contracting activity shall notify the workshop and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the workshop shall produce the supplies or provide the services under the specification or description cited in the order.

(b) The contracting activity shall provide 90-days advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procurement List and shall permit them to comment before action is taken, particularly when it involves—

(1) Changes that require new national stock numbers or item designations;

(2) Deleting items from the supply system;

(3) Standardization; or

(4) Developing new items to replace items on the Procurement List.

(c) For services, the contracting activity shall notify the workshop and central nonprofit agency concerned at least 90 days prior to the date that any changes in the scope of work or other conditions will be required.

(d) When, in order to meet its emergency needs, a con-

tracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the workshop and the central non-profit agency in writing of the reasons that it cannot meet the 90-day notification requirement.

8.713 Optional acquisition of supplies and services.

(a) Ordering offices may acquire supplies and services not included on the Procurement List from a workshop that is the low responsive, responsible offeror under a solicitation issued by other authorized acquisition methods.

(b) Ordering offices should forward solicitations to workshops that may be qualified to provide the supplies or services required.

8.714 Communications with the central nonprofit agencies and the Committee.

(a) The addresses of the central nonprofit agencies are contained in the current issue of the Procurement List.

(b) Any matter requiring referral to the Committee shall be addressed to the Executive Director of the Committee at the address contained in the current issue of the Procurement List.

8.715 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified workshop can produce the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the workshop designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

SUBPART 8.8—ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

8.801 Definitions.

"Government printing" means printing, binding, and blankbook work for the use of an executive department, independent agency, or establishment of the Government.

"Related supplies," as used in this subpart, means supplies that are used and equipment that is usable in printing and binding operations.

8.802 Policy.

(a) Government printing must be done by or through the

Government Printing Office (GPO) (44 U.S.C. 501), unless—

(1) The GPO cannot provide the printing service (44 U.S.C. 504);

(2) The printing is done in field printing plants operated by an executive agency (44 U.S.C. 501(2));

(3) The printing is acquired by an executive agency from allotments for contract field printing (44 U.S.C. 501(2)); or

(4) The printing is specifically authorized by statute to be done other than by the GPO.

(b) The head of each agency shall designate a central printing authority; that central printing authority may serve as the liaison with the Congressional Joint Committee on Printing (JCP) and the Public Printer on matters related to printing. Contracting officers shall obtain approval from their designated central printing authority before contracting in any manner, whether directly or through contracts for supplies or services, for the items defined in 8.801 and for composition, platemaking, presswork, binding, and micrographics (when used as a substitute for printing).

(c) Further, 44 U.S.C. 1121 provides that the Public Printer may acquire and furnish paper and envelopes (excluding envelopes printed in the course of manufacture) in common use by two or more Government departments, establishments, or services within the District of Columbia, and provides for reimbursement of the Public Printer from available appropriations or funds. Paper and envelopes that are furnished by the Public Printer may not be acquired in any other manner.

SUBPARTS 8.9 AND 8.10—[RESERVED]

SUBPART 8.11—LEASING OF MOTOR VEHICLES

8.1100 Scope of subpart.

This subpart covers the procedures for the leasing, from commercial concerns, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States.

8.1101 Definitions.

"Leasing," as used in this subpart, means the acquisition of motor vehicles, other than by purchase from private or commercial sources, and includes the synonyms "hire" and "rent."

"Motor vehicle" means an item of equipment, mounted on wheels and designed for highway and/or land use, that (a) derives power from a self-contained power unit or (b) is designed to be towed by and used in conjunction with self-propelled equipment.

8.1102 Presolicitation requirements.

(a) Except as specified in 8.1102(b), before preparing
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solicitations for leasing of motor vehicles, contracting officers shall obtain from the requiring activity a written certification that—

- (1) The vehicles requested are of maximum fuel efficiency and minimum body size, engine size, and equipment (if any) necessary to fulfill operational needs, and meet prescribed fuel economy standards;
 - (2) The head of the requiring agency, or a designee, has certified that the requested passenger automobiles (sedans and station wagons) larger than Type IA, IB, or II (small, subcompact, or compact) are essential to the agency's mission;
 - (3) Internal approvals have been received; and
 - (4) The General Services Administration has advised that it cannot furnish the vehicles.
- (b) With respect to requirements for leasing motor vehicles for a period of less than 60 days, the contracting officer need not obtain the certification specified in 8.1102(a)—
- (1) If the requirement is for type 1A, 1B, or II vehicles, which are by definition fuel efficient; or
 - (2) If the requirement is for passenger vehicles larger than 1A, 1B, or II, and the agency has established procedures for advance approval, on a case-by-case basis, of such requirements.
- (c) Generally, solicitations shall not be limited to current-year production models. However, with the prior approval of the head of the contracting office, solicitations may be limited to current models on the basis of overall economy.

8.1103 Contract requirements.

Contracting officers shall include the following items in each contract for leasing motor vehicles:

- (a) Scope of contract.
- (b) Method of computing payments.
- (c) A listing of the number and type of vehicles

required, and the equipment and accessories to be provided with each vehicle.

(d) Responsibilities of the contractor or the Government for furnishing gasoline, motor oil, antifreeze, and similar items.

(e) Unless it is determined that it will be more economical for the Government to perform the work, a statement that the contractor shall perform all maintenance on the vehicles.

(f) A statement as to the applicability of pertinent State and local laws and regulations, and the responsibility of each party for compliance with them.

(g) Responsibilities of the contractor or the Government for emergency repairs and services.

8.1104 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries:

- (a) The clause at 52.208-4, Vehicle Lease Payments.
- (b) The clause at 52.208-5, Condition of Leased Vehicles.
- (c) The clause at 52.208-6, Marking of Leased Vehicles.
- (d) A clause substantially the same as the clause at 52.208-7, Tagging of Leased Vehicles, for vehicles leased over 60 days (see 41 CFR 101-38.6).
- (e) The provisions and clauses prescribed elsewhere in the FAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding—
 - (1) The clause at 52.212-9, Variation in Quantity;
 - (2) The clause at 52.232-1, Payments;
 - (3) The clause at 52.222-20, Walsh-Healey Public Contracts Act; and
 - (4) The clause at 52.246-16, Responsibility for Supplies.

PART 13

SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000.

SUBPART 13.1—GENERAL

13.101 Definitions.

“Bulk funding” means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

“Delivery Order,” as used in this part, means an order for supplies or services placed against an established contract or with Government sources of supply.

“Purchase Order,” as used in this part, means an offer by the Government to buy certain supplies or services and construction from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit. The Optional Form 347, Order for Supplies or Services, is designed for this purpose.

“Small purchase” means an acquisition of supplies, services, and construction in the amount of \$25,000 or less using the procedures prescribed in this part.

“Small purchase procedures” means the methods prescribed in this part for making small purchases using imprest funds, purchase orders, and blanket purchase agreements. The term excludes—

(a) Requirements obtained through the use of Delivery Orders;

(b) Contracts with the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (see Part 19); and

(c) Contracts awarded through (1) sealed bidding (see Part 14), (2) the negotiation procedures in Part 15, or (3) small business or labor surplus area set-asides (see Parts 19 and 20), other than small business-small purchase set-asides prescribed in 13.105.

13.102 Purpose.

The purpose of this part is to prescribe simplified procedures for small purchases in order to (1) reduce administrative costs and (2) improve opportunities for small business concerns and small disadvantaged business concerns to obtain a fair proportion of Government contracts.

13.103 Policy.

(a) The procedures prescribed in this part shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the small purchase limitation unless requirements can be met by using required sources of supply (see Part 8).

(b) Small purchase procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the small purchase limitation even though resulting awards do not exceed that limit. Requirements aggregating more than the small purchase dollar limitation shall not be broken down into several purchases that are less than the limit merely to permit negotiation under small purchase procedures.

(c) Small purchase procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services by contract (see 37.104).

13.104 Procedures.

(a) Contracting officers shall use the small purchase procedure that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an “all-or-none” basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under small purchase procedures as prescribed in 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments for small purchases (see Subpart 25.3).

(f) This part does not preclude using (1) Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)) or (2) negotiated two-party contracts (see Part 15), for acquisitions not exceeding the small purchase limitation.

(g) For proposed purchases covered by this part, see 5.101(a)(2) for public display requirements.

(h) When a quotation, oral or written, is to be rejected because a small business firm is determined to be not responsible (see Subpart 9.1), see 19.6 with respect to Certificates of Competency.

13.105 Small business-small purchase set-asides.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each acquisition of supplies or services that has an anticipated dollar value of \$25,000 or less and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This shall be accomplished by using the category of set-asides established by Pub. L. 95-507, specifically for small purchases, identified as small business-small purchase set-asides established by Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95-507).

(b) The requirements of this section 13.105 apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000(b)). Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

(c) The requirement for small business-small purchase set-asides does not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and Federal Supply Schedule contracts.

(d)(1) Each written solicitation under a small business-small purchase set-aside shall contain the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (or at least one if the purchase does not exceed the dollar threshold, prescribed in 13.106, for obtaining competition and price reasonableness) that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the

SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

(3) If the contracting officer proceeds with the small business-small purchase set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106(c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the small business-small purchase set-aside and complete the purchase on an unrestricted basis.

(4) When proceeding under 13.105(d)(1) or (3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106(b)(4)).

(5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.

(e) Policy concerning nonmanufacturers under small business-small purchase set-asides is prescribed in 19.501(f)(2).

13.106 Competition and price reasonableness.

(a) *Purchases not over 10 percent of the small purchase limitation.* (1) Purchases not exceeding this limit may be made without securing competitive quotations if the contracting officer considers the prices to be reasonable.

(2) Such purchases shall be distributed equitably among qualified suppliers.

(3) If practical, a quotation shall be solicited from other than the previous supplier before placing a repeat order.

(4) The administrative cost of verifying the reasonableness of the price of purchases not exceeding 10 percent of the small purchase limitation may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need be taken only when—

(i) The buyer or contracting officer suspects or has information (e.g., comparison to previous prices paid or personal knowledge of the item involved) to indicate that the price may not be reasonable; or

(ii) Purchasing an item for which no comparable pricing information is readily available (e.g., an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).

(b) *Purchases over 10 percent of the small purchase limitation.* (1) Contracting officers shall solicit quotations from a reasonable number of sources to promote competi-

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within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.

13.202 [Reserved]**13.203 Establishment of Blanket Purchase Agreements.****13.203-1 General.**

(a) The following are circumstances under which contracting officers may establish BPA's:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (but see 13.204(e)(4)).

(d) BPA's should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous small purchases are usually made from such suppliers, it would be advantageous to establish BPA's with those firms.

(e) To the extent practical, BPA's for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPA's.

(f) BPA's may also be established with Federal Supply Schedule contractors and GSA Nonmandatory ADP Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that BPA's would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) BPA's shall be prepared and issued on any agency-

authorized purchase order form.

(j) BPA's shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) *Notice of individuals authorized to purchase under the BPA and dollar limitations by title of position or name.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(6) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; *provided*, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements (except that statement (j)(6)(iii) should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing

period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; *provided*, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPA's in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

13.203-2 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the FAR that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.204 Purchases under Blanket Purchase Agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the blanket purchase agreement, being a method of simplifying the making of individual small purchases, shall not be used to avoid the small purchase limitation.

(b) Unless otherwise specified in agency regulations, individual purchases under BPA's, except those BPA'S established in accordance with 13.203-1(f), shall not exceed the dollar limitation for small purchases (see 13.103).

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business-small purchase set-asides. The requirements of 13.106 and 13.107 also apply to each order under a BPA.

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(d) If there is an insufficient number of BPA's to ensure maximum practicable competition for a particular purchase, the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPA's to facilitate future purchases if (i) recurring requirements for the same or similar items or services seem likely, (ii) qualified sources are willing to accept BPA's, and (iii) it is otherwise practical to do so.

(e) Documentation of purchases under BPA's shall be limited to essential information and forms, as follows:

(1) Purchases under BPA's generally should be made orally, but a purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(2) If a purchase document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(3) If a purchase document is issued, informal correspondence, an authorized purchase form, or a form developed locally for the purpose, may be used.

(4) Documentation of individual purchases under BPA's shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

PART 38

**FEDERAL SUPPLY SCHEDULE
CONTRACTING**

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PART 38
FEDERAL SUPPLY SCHEDULE
CONTRACTING

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration (see Subpart 8.4, Federal Supply Schedules, for additional information). See Part 39 for automatic data processing and telecommunications equipment and services coverage. The Department of Defense uses a similar system of schedule contracting for military items that are also not a part of the Federal Supply Schedule program.

SUBPART 38.1—FEDERAL SUPPLY
SCHEDULE PROGRAM

38.101 General.

(a) The Federal Supply Schedule program provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities at lower prices while obtaining discounts associated with volume buying. Indefinite delivery contracts (including requirements contracts) are awarded, using competitive procedures, to commercial firms to provide supplies and services at stated prices for given periods of time, for delivery within the 48 contiguous states, Washington, DC, and possible Alaska, Hawaii, and overseas deliveries. The schedule contracting office issues publications, titled Federal Supply Schedules, containing

the information needed for placing delivery orders with the contractors.

(b) Each schedule identifies specific agencies in designated geographic areas that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users (see 8.404(b)) may issue orders under the schedules, and the contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules; e.g., the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

SUBPART 38.2—ESTABLISHING AND
ADMINISTERING FEDERAL SUPPLY SCHEDULES

38.201 Coordination requirements.

(a) Subject to interagency agreements, contracting officers having responsibility for awarding Federal Supply Schedule contracts shall coordinate and obtain approval of the General Services Administration's Federal Supply Service (FSS) before—

- (1) Establishing new schedules;
- (2) Discontinuing existing schedules;
- (3) Changing the scope of agency or geographical coverage of existing schedules; or
- (4) Adding or deleting special item numbers, national stock numbers, or revising their description.

(b) Requests should be forwarded to the General Services Administration, Federal Supply Service, Office of Commodity Management (FC), Washington, DC 20406.

